

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| In re application of | : | Attorney Docket No. 2006_1209A |
| Germano LEICHSENDRING et al. | : | Confirmation No. 7022 |
| Serial No. 10/587,214 | : | Group Art Unit 2456 |
| Filed July 25, 2006 | : | Examiner Tom Y. Chang |
| ACCESS CONTROL SYSTEM, AND ACCESS CONTROL DEVICE AND RESOURCE PROVIDING DEVICE USED FOR THE SAME | : | Mail Stop: AF |

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

It is submitted that the rejections set forth in the final Office Action of October 21, 2011 are improper due to clear factual errors contained therein. While there are many limitations throughout the claims that are not disclosed or rendered obvious by the applied references, only the most clear errors in the Office Action are discussed below.

On pages 2 and 3 of the Office Action, the Examiner explains that the currently pending claims are interpreted as invoking the sixth paragraph of 35 U.S.C. § 112. The claims are then rejected as being indefinite and as failing to comply with the written description requirement, based on the assertion that “the written description fails to disclose the corresponding structure, material, or acts for the claimed functions.” These rejections are traversed for the following reasons.

The official USPTO examination guidelines released in the Federal Register, Vo. 76, No. 27, on February 9, 2011 provide as follows:

“The structure corresponding to a § 112, ¶ 6 claim limitation for a computer-implemented function must include the algorithm needed to transform the general purpose computer or microprocessor disclosed in the specification. The corresponding structure is not simply a general purpose computer by itself but the special purpose computer as programmed to perform the disclosed algorithm. Thus, the specification must sufficiently disclose an algorithm to transform a general purpose microprocessor to the special purpose computer. An algorithm is defined, for example, as “a finite sequence of steps for solving a logical or mathematical problem or performing a task.” Applicant may express the algorithm in any understandable terms including as a mathematical formula, in prose, in a flow chart, or “in any other manner that provides sufficient structure.”” (Emphasis added).

It is noted that the Federal Register, including these official guidelines, is accessible at <http://www.gpoaccess.gov/fr/>. In view of the above, it is clear that an algorithm is considered to satisfy the requirement of corresponding structure in the written description with respect to computer-implemented inventions, and this algorithm can be expressed in the form of a flow chart. Figures 1, 4, and 6-14 of the present application include flow charts expressing the algorithms relevant to the pending claims. In accordance with official USPTO guidelines, these algorithms satisfy the requirement for corresponding structure in the written description in the present application, and withdrawal of the rejections under 35 U.S.C. § 112 is respectfully requested.

Beginning on page 6 of the Office Action, claims 1-11 and 14-23 are rejected over prior art. Specifically, claims 1, 3-5, 8-10, 14, 17-19 and 22 are rejected as being unpatentable over Mizayaki et al. (US 2004/0073814) in view of Brockway et al. (US 2004/0210897) and claims 2,

6, 7, 11, 15, 16, 20, 21 and 23 are rejected as being unpatentable over Mizayaki et al. in view of Brockway et al. and further in view of Thomsen (US 7,194,004).

On pages 7 and 10 of the Office Action the Examiner acknowledges that the Mizayaki et al. reference does not disclose an existence check unit or an access discard unit/access rejection unit as required by claims 1, 10, and 18 (“Mizayaki does not teach periodically determining the continued existence of a user and rejecting access of said user if the continued existence of the user can not be confirmed...”). However, it is asserted that Brockway et al. discloses an existence check unit and an access discard unit, and that it would have been obvious to modify Mizayaki et al. in view of Brockway et al. in a manner yielding the claimed invention. This obviousness rejection is defective because of a clear factual error; namely, the Brockway et al. reference does not disclose an existence check unit or an access discard unit/access rejection unit meeting the requirements of claims 1, 10, and 18.

Claim 1 recites an existence check unit that transmits an existence check instruction to the resource use device of which the management information is stored in the storage unit, that is configured to receive a response to the existence check instruction from the resource use device, and that confirms whether or not a response to the existence check instruction is received from the resource use device which has been permitted to access the resource providing device by the access permission unit, via the communication unit; and an access discard unit that instructs the resource providing device via the communication unit to reject an access from the resource use device from which a response to the existence check instruction is not received by the existence check unit. Claim 18 recites identical subject matter, and claim 10 recites very similar claim language.

Importantly, the Examiner has interpreted the pending claims as invoking the sixth paragraph of 35 U.S.C. § 112. As set forth in MPEP 2182: “the application of a prior art

reference to a means or step plus function limitation requires that the prior art element perform the identical function specified in the claim.” (Emphasis added). In other words, the prior art does not support a rejection of the claims unless the prior art actually performs the identical function set forth in the claims.

The Brockway et al. reference discloses a “Plug and Play” (PnP) technology that involves a client machine, and peripheral device, and a server (see paragraphs 0003 to 0007). On page 18, lines 4-8 of the Office Action, the Examiner asserts that a peripheral device is prevented from accessing the server. Accordingly, it appears that the Examiner considers the peripheral device of Brockway et al. to be analogous to the resource use device recited in claims 1, 10, and 18. However, the Examiner’s assertion that a peripheral device is prevented from accessing the server is a clear factual error. Paragraph 0014 of Brockway et al. (cited on pages 8 and 11 of the Office Action) merely discloses that the server will be aware that a peripheral device has been removed and can deactivate or remove that peripheral device from the system. Brockway et al. never discloses rejecting access from a peripheral device to a server or a client machine. As such, the prior art rejection is premised on a clear factual error and is thus defective.

In fact, the peripheral device of Brockway et al. never accesses the server, and thus Brockway et al. clearly does not include an access discard unit that instructs the resource providing device (server) to reject an access from the resource use device (peripheral device). In other words, paragraphs 0005-0007 of Brockway et al. clearly disclose that the client machine is connected to the server and the peripheral device is connected to the client machine. Because the server is accessed by the client machine and not the peripheral device, the system of Brockway et al. does not instruct the server to reject an access from the peripheral device which never accesses the server in the first place. As such, Brockway et al. does not disclose an access discard unit, and thus the prior art rejection is premised on a clear factual error.

Moreover, it is noted that the system of Brockway et al. does not confirm whether or not a response to the existence check instruction is received from the resource use device, as required by the existence check unit of claims 1, 10, and 18. Instead, paragraph 0013 of Brockway et al. (relied upon on pages 8 and 10 of the Office Action) merely discloses comparing enumerations of peripheral devices received from client machines. As such, Brockway et al. does not disclose an existence check unit meeting the requirements of claims 1, 10, and 18, and thus the prior art rejection is premised on a clear factual error.

In summation, the written description and indefiniteness rejections are contrary to the position of the USPTO as set forth in the Federal Register (cited above) and are thus clearly erroneous. Brockway et al. does not disclose an existence check unit or an access discard unit/access rejection unit as required by claims 1, 10, and 18, and thus the prior art rejection is premised on a clear factual error. The remaining claims depend from one of independent claims 1 and 10, and are thus patentable over the applied prior art at least by virtue of their dependencies.

Respectfully submitted,

Germano LEICHSENDRING et al.

By Andrew D. St. Clair/

Andrew D. St. Clair
Registration No. 58,739
Attorney for Applicants

Digitally signed by /Andrew D. St.Clair/
DN: c=us, o=Andrew D. St.Clair, ou,
email=astclair@lewandendring.com, c=US
Date: 2012.02.21 16:44:23 -05'00'

ADS/nck
Washington, D.C. 20005-1503
Telephone (202) 721-8200
Facsimile (202) 721-8250
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